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Enforcement/Compliance

Written Petition Requesting A Hearing

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Municipal Facilities

Re: Division of Water Pollution Control Case No. 07-081 FILE
In the Matter of John Rankin, Respondent

The Respondent in the above matter received a Director's Order and Assessment on Monday July 2, 2007 and is hereby timely requesting a hearing before the Water Quality Control Board as is afforded in TCA 69-3-109 & 115.

This petition has two parts. The first summarizes the Respondent's contentions with the Director's Order and Assessment and the second part contains the Respondent's request for an informal settlement of the Matter. Definitions used herein have the same meaning as in the Order.

I.

Respondent contests the classification of the unnamed tributary (the "tributary") as "waters of the state". The tributary, instead, is clearly a wet weather conveyance as defined in Chapters 1200-4-3-.04 (4) and 1200-4-4-.13 of the *Official Compilation: Rules and Regulations of the State of Tennessee (the "Rules")*. Certainly, the tributary also meets the test of TCA 69-3-103 (33) in that the tributary does not "combine or effect a junction with natural surface or underground waters" and has no "flow".

The drainage area in question is 23 acres in size, does not supply DWS, IWS, FAL, REC, LWV, IRR, or NAV, flows only in direct response to precipitation runoff in its immediate locality, is above the groundwater table, does not support fish or aquatic life, and is not suitable for drinking water. Respondent took pictures of the tributary prior to filling and those pictures are attached.

It is important to note that the impoundment in question has not adversely affected the quality of downstream waters (Rules 1200-4-3-.02) because the tributary has been entirely impounded downstream of the property of the Respondent (see attached pictures as annotated). In fact, the attached pictures clearly show the tributary is currently being filled without permit *today* adjacent the Cumberland River a quarter of a mile downstream of the Respondent's property.

While the Respondent acknowledges that it is not pertinent that others have impounded the tributary downstream without permit (some with public funding), it is pertinent as to why the Respondent, who is knowledgeable about the Rules, allowed the tributary to be filled without requesting a classification – having witnessed the downstream impoundments for many years. The Respondent did not knowingly pollute waters of the state. There also cannot be shown a significant nexus between the tributary on the Respondent's property and the Cumberland River.

There have been no complaints of erosion or sediment leaving the property. No erosion has occurred and the site is completely stabilized and has a permanent stand of grass and oversized detention ponds.

The presence of an intermittent blue line on the U.S.G.S. Topographic map (in this case) or the non-presence of a line does not factually determine the character of the tributary.

Respondent has never received a Stop Work Order from anyone. Any such order has been fabricated post-fact and warrants further investigation.

The Division of Solid Waste Management has visited the site and has concluded the dirt and rock fill to not be objectionable.

II.

Respondent acknowledges that the tributary is a wet weather conveyance, which alteration is subject to the issuance of a General Permit. Additionally, the disturbed area is greater than 5 acres in size and requires coverage under TNCGP.

TCA 4-5-105 encourages informal settlements in cases where elaborate proceedings are unnecessary.

TCA 69-3-105 gives the Board the authority to hear this appeal and modify the Order.

Respondent pleads an informal settlement that takes into account the matters in TCA 69-3-115 (3) (A)-(H) and 69-3-105 (a) (2) (A)-(C). The proposal by the Respondent is summarized as follows:

1. Respondent will confirm with the Division immediately that the site is, in fact, properly and permanently stabilized to avoid any potential erosion and sedimentation.
2. Respondent will, within 180 days, permanently place one hundred (100) acres of the Respondent's property in question in an irrevocable conservation easement that complies with all of the Division's requirements for such easements. The property is the last industrial zoning in Ashland City and the removal of the property from development will be an enormous gain to the natural resources of the state. The property is appraised in excess of \$1,000,000.

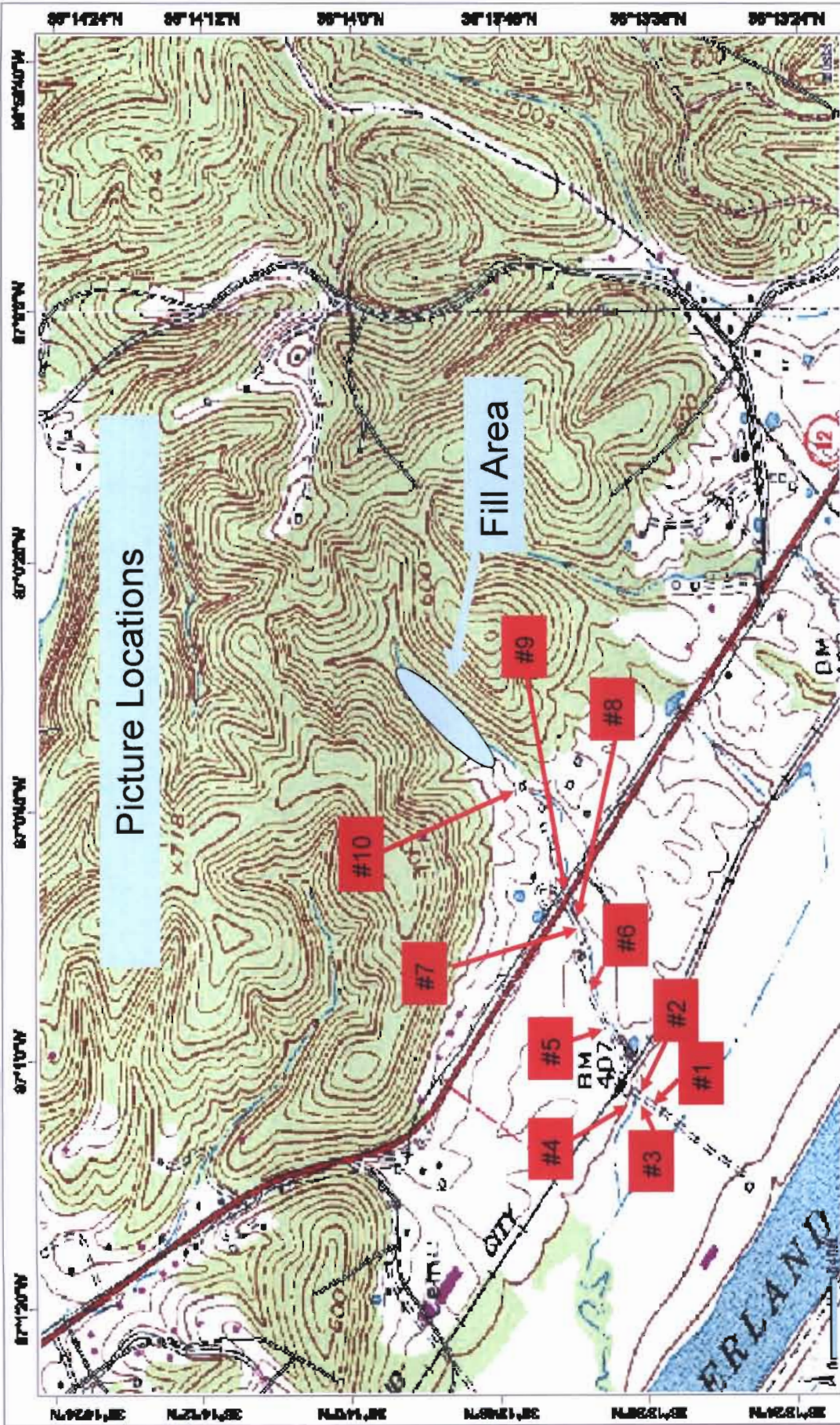
The Order being appealed is practically unexecutable. The removal of over a million yards of dirt and rock at a cost of over \$4,000,000 simply does not justify the de minimis degradation of the 1,500 feet of wet weather conveyance or even the degradation resulting from the classification of the tributary as waters of the

state as the Order presumes without evidence. A very practical mitigation is the removal of the property surrounding the site from ever being developed instead of requiring the restoration of the 1,500 feet of impacted wet weather conveyance.

Petitioned this the 25th day of July, 2007,



John Rankin, Respondent



Location # 1

concrete in ditch



Location # 2



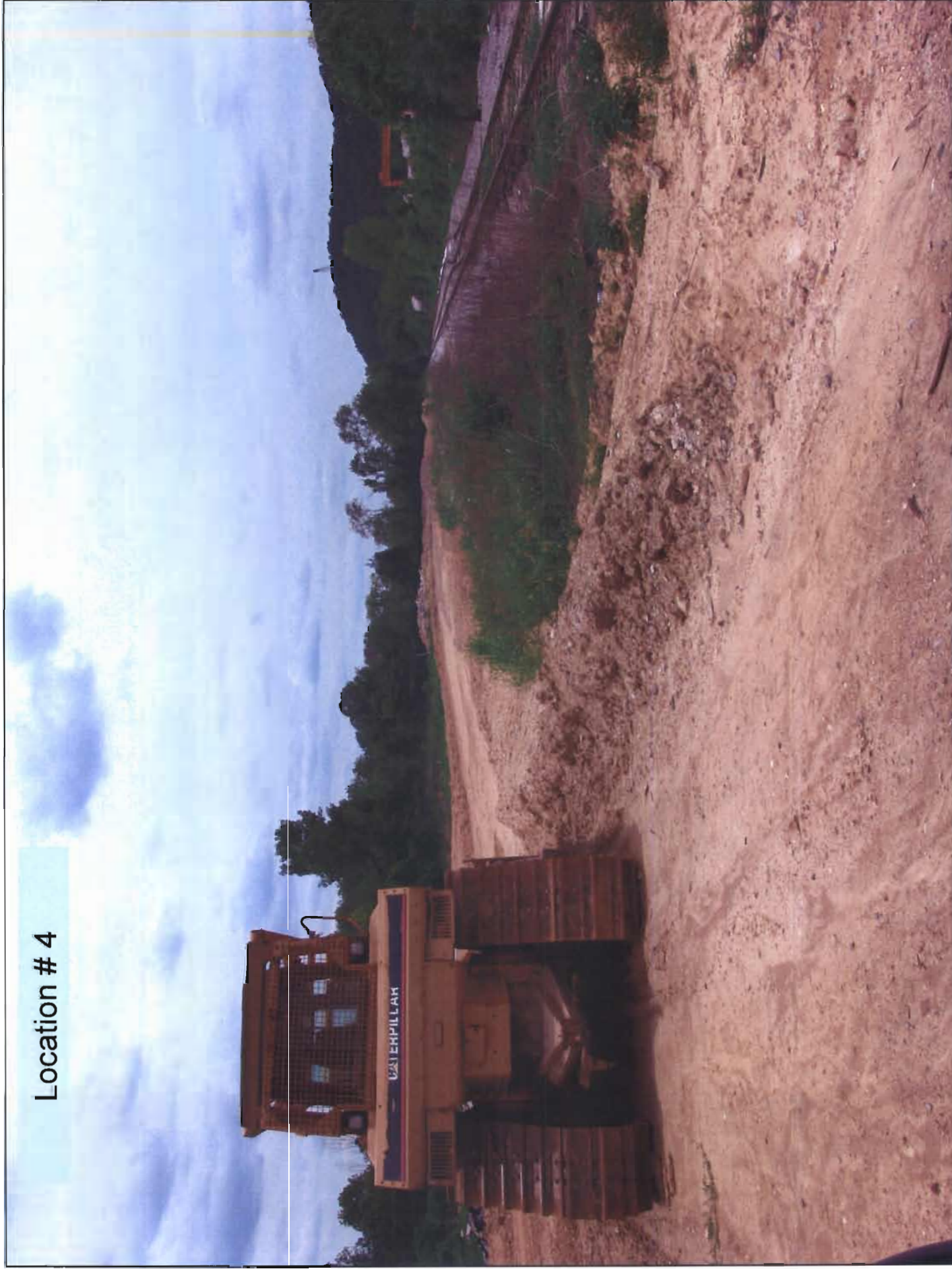
Tributary

Location # 3

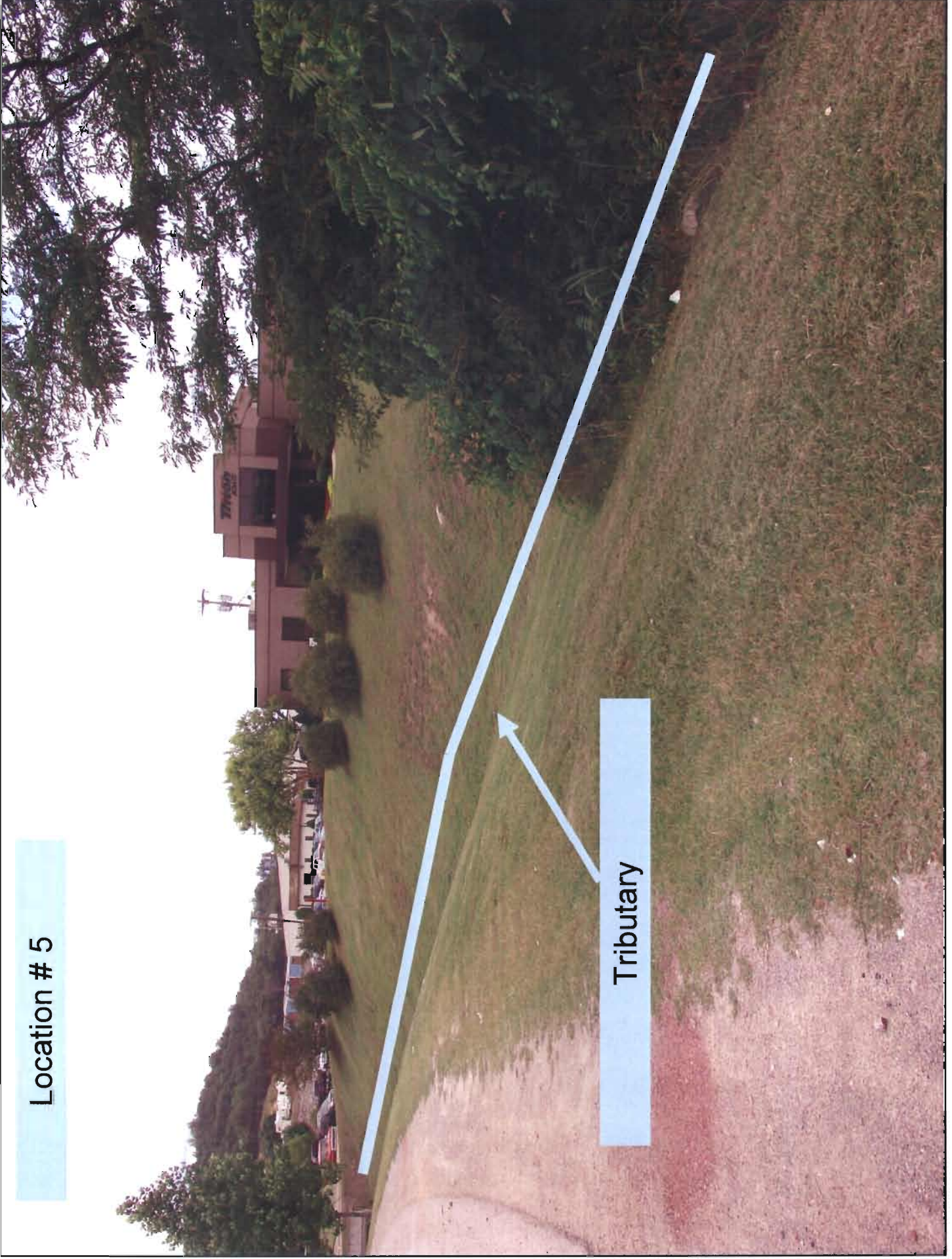
Unpermitted Filling



Location # 4

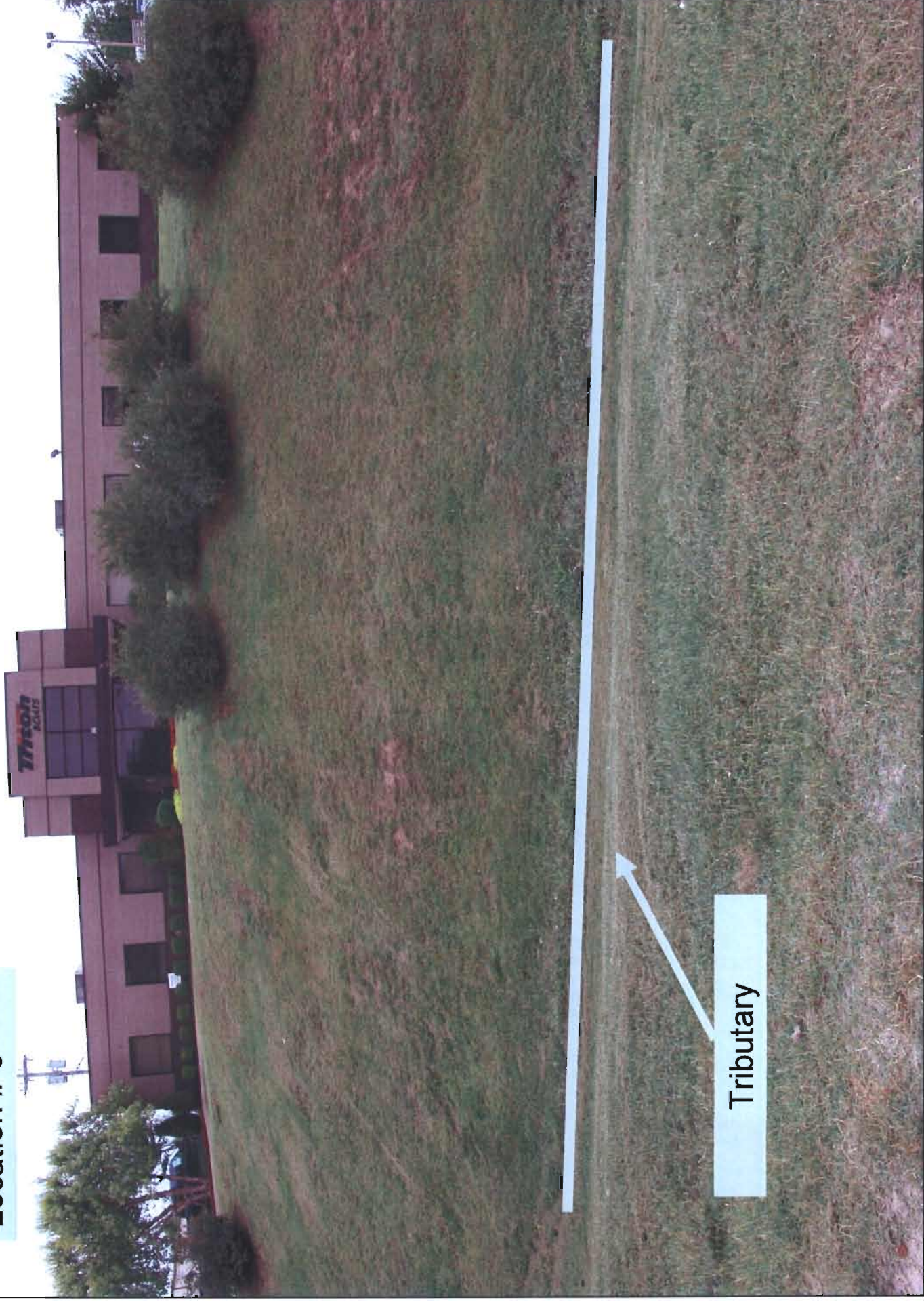


Location # 5



Tributary

Location # 5



Location # 6

Tributary



Location # 7



Location # 8



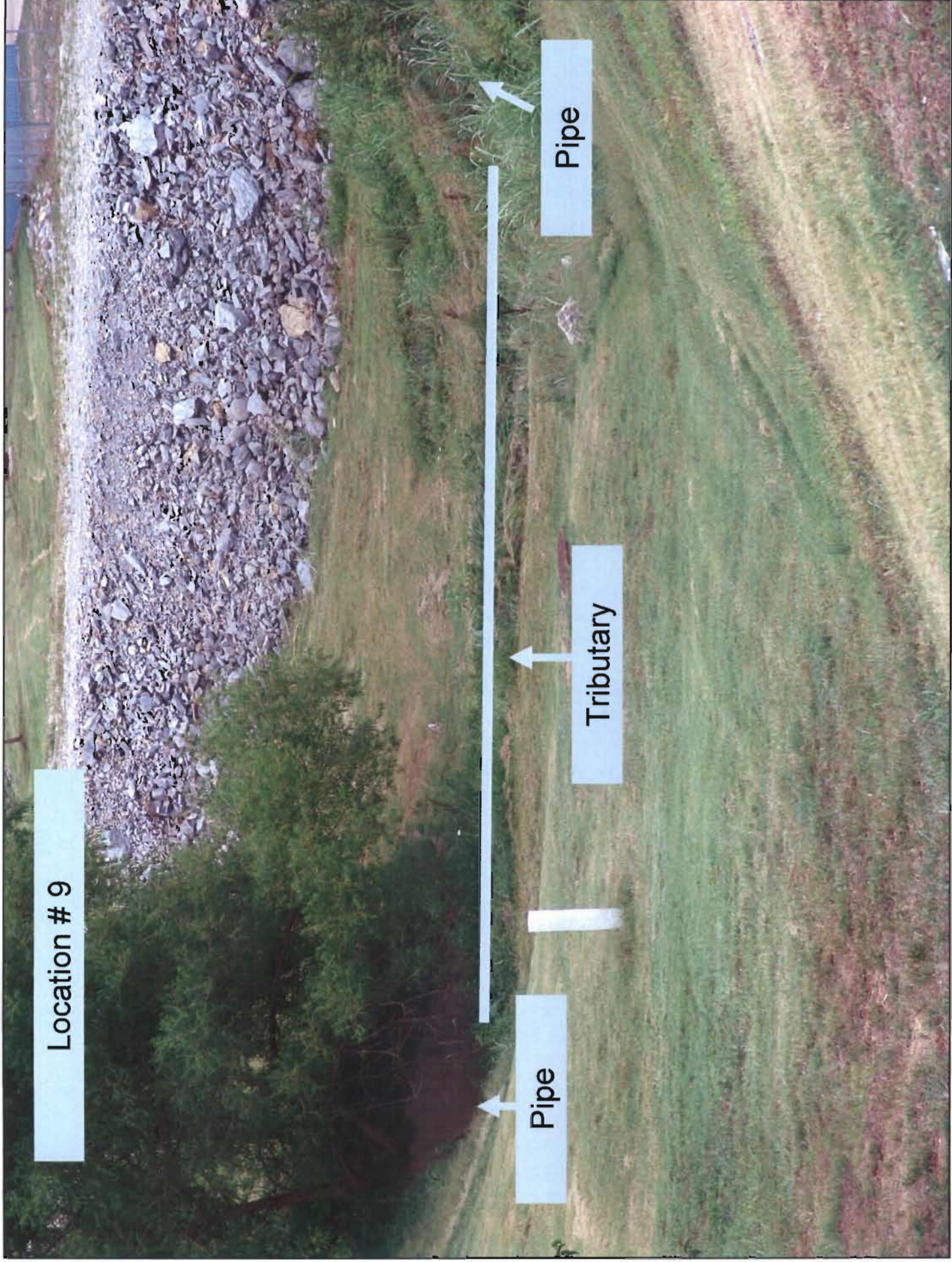
Tributary is encapsulated under this site.

Location # 9

Pipe

Tributary

Pipe



Location # 10

Respondent's
Property begins
here.

This property owned
by another party.

Tributary
Encapsulated

